

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Number EB-07-SJ-068
International Broadcasting Corporation)	
)	NAL/Acct. No. 200832680001
San Juan, PR)	
)	FRN 0003736220
Antenna Structure Registration # 1026702)	

ORDER ON REVIEW

Adopted: January 20, 2010

Released: January 22, 2010

By the Commission:

I. INTRODUCTION

1. In this Order on Review (“*Order on Review*”), we deny the Application for Review filed by International Broadcasting Corporation (“IBC”), owner of antenna structure # 1026702, in Canovanas, Puerto Rico, pursuant to section 1.115 of the Commission’s Rules (“Rules”).¹ IBC seeks review of the Enforcement Bureau’s (“Bureau”) *Memorandum Opinion and Order*² granting in part and denying in part IBC’s petition for reconsideration of a *Forfeiture Order* issued January 9, 2008.³ The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$13,000 for IBC’s willful and repeated violation of sections 17.50 and 17.57 of the Rules.⁴ The noted violations involved IBC’s failure to paint its antenna structure to maintain good visibility, and failure to notify the Commission of a change in antenna structure ownership. In the *Memorandum Opinion and Order*, the Enforcement Bureau reduced the forfeiture to \$10,400 based on IBC’s history of compliance with the Rules.

II. BACKGROUND

2. Section 17.50 of the Rules requires that antenna structures requiring painting⁵ be cleaned or repainted as often as necessary to maintain good visibility. Section 17.57 of the Rules requires that the owner of an antenna structure for which an Antenna Structure Registration (“ASR”) number has been obtained must immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information.

¹ 47 C.F.R. § 1.115.

² *International Broadcasting Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 4027 (Enf. Bur. 2008) (“*Memorandum Opinion and Order*”).

³ *International Broadcasting Corporation*, Forfeiture Order, 23 FCC Rcd 71 (Enf. Bur. South Central Region 2008) (“*Forfeiture Order*”).

⁴ 47 C.F.R. §§ 17.50, 17.57.

⁵ Antennas structures, such as antenna structure # 1026702, more than 200 feet in height must be painted and lit. See 47 C.F.R. § 17.21.

3. On September 7 and 11, and October 25, 2007, inspections of IBC's antenna structure revealed that the paint on most of the tower was missing, leaving the metal exposed and reducing the tower's visibility. On September 7 and 11, and November 1, 2007, Del Pueblo Radio Corporation was listed as the owner of antenna structure # 1026702 in the Commission's ASR database. IBC's owner admitted that it acquired the structure in 2003.⁶ In light of these facts, the *Forfeiture Order* imposed a monetary forfeiture in the amount of \$13,000 for failure to paint antenna structure # 1026702 to maintain good visibility, and failure to notify the Commission of a change in antenna structure ownership. In the *Memorandum Opinion and Order*, the Enforcement Bureau reduced the forfeiture to \$10,400 based on IBC's history of compliance with the Rules.

4. In its Application for Review, IBC asserts that the Bureau applied a precedent or policy that should be overturned.⁷ Specifically, IBC claims that the Bureau's failure to consider its prompt post-inspection efforts to come into compliance with the Rules is inconsistent with the Commission's *Forfeiture Policy Statement*⁸ and section 503(b) of the Act.⁹ IBC asserts that the Bureau should have considered IBC's efforts to remediate its rule violations and exercised its discretion to depart downward from the base forfeiture amounts, because such discretion would be consistent with "the statutory imperative that the Commission take a holistic approach to evaluating the violation and the violator in assessing whether to impose a forfeiture, and what adjustment of the forfeiture amount if any, shall be made."¹⁰ IBC states that, at a minimum, the Bureau should have explained why it did not consider IBC's post-inspection compliance efforts. IBC, however, does not dispute that its antenna structure required paint or that it failed to update the ownership information in the ASR database.

III. DISCUSSION

5. The Bureau, in the *Forfeiture Order* and *Memorandum Opinion and Order*, correctly applied the Commission's long-standing policy of finding that corrective action taken to come into compliance with the Rules is expected and does not nullify or mitigate any prior forfeitures or violations. As the Commission has long held, "[t]he forfeiture provisions of section 503 of the Communications Act are intended to encourage broadcast station licensees to take appropriate action to prevent violations. Basing mitigation or cancellation of a forfeiture upon corrective action taken subsequent to the misconduct upon which liability is based would tend to encourage remedial, rather than preventive, action."¹¹ The Commission took such an approach prior to and subsequent to adoption of the *Forfeiture Policy Statement*.¹²

⁶ *International Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200832680001 at 1 (Enf. Bur. San Juan Office, rel. November 13, 2007).

⁷ IBC Application for Review at 3-4.

⁸ The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁹ 47 U.S.C. § 503(b).

¹⁰ IBC Application for Review at 4.

¹¹ *International Broadcasting Corp.*, Memorandum Opinion and Order, 19 FCC2d 793, 793 (1969). *See also, e.g., Cumulus Licensing Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 5286 (2008) (finding that post-notification remedial efforts do not warrant mitigation of forfeiture); *Sutro Broadcasting Corporation*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277 (2004) (stating that the Commission will generally reduce the assessed forfeiture amount "based on the good faith corrective efforts of a violator when those actions were taken *prior* to Commission notification of the violation") (emphasis added); *CB Radio, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 8836, (continued...)

6. We find that the record in this case does not provide any reason to deviate from this long-standing policy regarding remedial compliance efforts. The record shows that the paint on IBC's antenna structure was so deteriorated that it required new paint prior to the agents' first inspection in order to comply with section 17.50 of the Rules. The record also shows that IBC acquired the antenna structure more than three years prior to the agents' inspection, yet IBC failed to take any actions to update its ownership information until after the Commission notified it of the violation. Although IBC hired a contractor within a week of the first two inspections, repainted the tower by January 11, 2008, and updated the ASR database on December 13, 2007, such action to come into compliance with the Rules is expected and does not warrant reduction of the forfeiture. If IBC had failed to correct the violations in a prompt manner, the Bureau could have issued an additional and significantly higher proposed forfeiture.¹³ Moreover, to reduce the forfeiture as requested would be to reward postponement of compliance with the Rules until after a Commission inspection. We find such an approach contrary to the public interest.

7. Upon review of the Application for Review and the entire record herein, we conclude that IBC has failed to demonstrate that the Bureau erred. The Bureau properly decided the matters before it, and we uphold its decision in its *Forfeiture Order* and *Memorandum Opinion and Order*.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to section 1.115(g) of the Commission's Rules,¹⁴ that the Application for Review filed by International Broadcasting Corporation **IS DENIED** and the *Memorandum Opinion and Order* **IS AFFIRMED**.

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8839-40 (2007) (noting that "it is well established that post-investigational efforts to correct a violation do not mitigate the forfeiture or warrant a reduction in the assessed forfeiture amount"); *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21875-76 (2002) (finding that a downward adjustment of an aggregate forfeiture was not warranted where the carrier lacked an effective antenna compliance program at the time of the violations and only corrected such violations *after* the Commission brought them to its attention); *Independent Communications, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 9605, 9609 (1999) (finding that a downward adjustment of a forfeiture was not warranted for development of compliance plan after discovery of the violations); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099, 6099 (1994) (finding that a downward adjustment of a forfeiture was not warranted where a public coast station operator discontinued unauthorized operations *after* the NAL was issued); *TCI Cablevision of Maryland, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6013, 6014 (1992) (finding that a downward adjustment was not warranted where a cable operator repaired the signal leakages *after* inspection/issuance of the NAL). See also *Odino Joseph*, Forfeiture Order, 18 FCC Rcd, 16522, 16524 (Enf. Bur. 2003) (finding that a downward adjustment was not warranted, where a pirate broadcaster terminated all transmissions *after* the Commission's investigation); *Kenneth Paul Harris, Sr.*, Forfeiture Order, 15 FCC Rcd 23991, 23002 (Enf. Bur. 2000) (finding that a broadcast licensee, who took corrective steps and sought legal counsel only *after* the Commission initiated its investigation into the Section 301 unauthorized transfer issue, did not demonstrate a good faith effort to comply).

¹² See *id.*

¹³ The Commission also clarified that "[p]ost-notification remedial efforts cannot mitigate the effects of a violation that results in the issuance of forfeiture. However, post-notification remedial efforts may be relevant in determining the ultimate severity of any further or future enforcement action. Thus, for instance, a licensee that takes minimal steps to remedy a violation post-notification could receive an NAL that is significantly higher (by way of an upward adjustment) than a licensee that takes substantial steps to come into compliance as quickly as possible -- although neither licensee can reduce its forfeiture liability for its pre-notification violation." *Cumulus Licensing Corp.* at 5291.

¹⁴ 47 C.F.R. § 1.115(g).

9. Payment of the \$10,400 forfeiture shall be made in the manner provided for in section 1.80 of the Rules¹⁵ within 30 days of the release of this *Order on Review*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.¹⁶ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. IBC will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

10. **IT IS FURTHER ORDERED** that this *Order on Review* shall be sent by regular mail and by certified mail, return receipt requested, to International Broadcasting Corporation at its address of record and to its counsel, Richard F. Swift, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁵ 47 C.F.R. § 1.80.

¹⁶ 47 U.S.C. § 504(a).